

FMLA Changes On the Way

By John Golom

Calendar year rather than rolling year. Consecutive leave and/or concurrent leave. FMLA leave by request rather than by mandate. These are a few of the changes State employees need to be aware of when the rule governing leave under the Family and Medical Leave Act (FMLA) takes effect on January 1, 2007.

The change in the way FMLA will be administered comes about as a result of the design conferences sponsored by DHRM as part of the HB 319 consolidation. Regarding the upcoming changes, Jeff Herring, DHRM Executive Director commented, "With all the federal regulations that agencies are facing today, DHRM needs to do everything that is possible to balance the protections of the regulations with the effective administration of the business of State agencies. This rule change is a result of many subject matter experts' shared attempt to develop continual best practices in defining the administration of regulations such as FMLA."

Currently, DHRM Rule requires that any leave taken by an employee for reasons that meet the definition of a "serious health condition" be designated as FMLA leave. Human resource employees sometimes find themselves in the position of notifying an employee that his/her leave is being designated as FMLA whether the employee wants it or not.

Under the new rule, employees may generally choose whether or not they want their absence to count against the 12 weeks of unpaid leave, as provided for in the Act. Other significant changes in the new rule include:

- A return to the calendar year rather than a "rolling" year when calculating FMLA leave use and eligibility; and
- The option for employees to use their own accrued leave consecutively rather than concurrently with their use of FMLA leave.

Many of the procedures for applying for and processing FMLA leave remain the same. There are, for instance, no changes to who is eligible for FMLA leave or how intermittent leave may be used. The most significant difference in the new process is that the employee generally determines when s/he wants to make use of the FMLA leave benefit. Rosanne Ricks, DHRM Field Office Director for the Department of Human Services, whose staff processes more than 850 FMLA applications every calendar year, remarked, "Having employees be the responsible party to request FMLA leave should result in a significant increase in flexibility for employees and an increase in efficiencies of the administrative aspects. It should also eliminate inequities in the application of FMLA across each department of state government."

State agencies will receive training through a series of seminars that will be held during the first quarter of 2007. Notices of the upcoming changes will start appearing in paychecks, on bulletin boards, on state websites, and through state-wide emails as early as November 1. "FMLA is a relatively young federal regulation that is still being defined and shaped," commented Jeff Herring. "I am confident that the new FMLA policy that the task force drafted will provide the state with greater consistency in the administration of FMLA and therefore reduced liability to the state, one of DHRM's main goals."